

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN D. DRUMMOND,

Defendant.

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Case No. 4:17-cr-00459

OPINION & ORDER
[Resolving Docs. [30](#) & [32](#)]

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Finding that Defendant Ryan Drummond does not raise extraordinary and compelling reasons warranting a sentence reduction, the Court **DENIES** Defendant's compassionate release motion.

I. Background

In 2018, Defendant Drummond pleaded guilty to a gun possession offense.¹ The Court imposed a below-Guidelines 90-month prison sentence.²

In late September 2020, Drummond filed a *pro se* motion for compassionate release.³ Although the Court appointed counsel for Defendant in October 2020, that counsel did not supplement Defendant's motion until April 5, 2022.⁴ The Government then filed an opposition brief.⁵

II. Compassionate Release Framework and the COVID-19 Pandemic

¹ Doc. 15.

² Doc. 29 (Sealed).

³ Doc. 30.

⁴ Doc. 32. On March 31, 2022, the Court ordered defense counsel to file a motion within seven days.

⁵ Doc. 35. The Government filed Defendant's medical records under seal. Doc. 36.

Case No. 4:17-cr-00459
GWIN, J.

In 2018, Congress changed the law to make compassionate release more readily available to federal inmates.⁶ Under the new rules, to bring a motion, a defendant must first meet the “exhaustion requirement” by filing a motion with the prison warden and waiting thirty days.⁷

After that, a defendant must show two things to obtain relief. First, the defendant must demonstrate that there are “extraordinary and compelling reasons for release.”⁸ Second, the defendant must show that the applicable 18 U.S.C. § 3553(a) sentencing factors also support release.⁹

III. Extraordinary and Compelling Reasons

In general, the Court has “discretion to define [what counts as] ‘extraordinary and compelling’ on [its] own initiative.”¹⁰

But there are certain circumstances that courts cannot consider. Courts cannot consider facts that existed when the defendant was originally sentenced.¹¹

And, a defendant’s COVID-19-based petitions generally cannot warrant relief. In a 2021 decision, the U.S. Court of Appeals for the Sixth Circuit—whose rulings bind this Court—ruled that a defendant who has the opportunity to receive a COVID-19 vaccine generally cannot succeed on a motion citing the risk of contracting COVID-19.¹² And, only in certain rare circumstances in which a defendant presents a “compelling reason justifying

⁶ See *United States v. Jones*, 980 F.3d 1098, 1105 (6th Cir. 2020) (discussing statute’s history and purpose).

⁷ *United States v. Alam*, 960 F.3d 831, 832 (6th Cir. 2020) (citing 18 U.S.C. § 3582(c)(1)(A)).

⁸ *United States v. Phillips*, No. 21-6068, 2022 WL 1112770, at *2 (6th Cir. Apr. 14, 2022).

⁹ *Id.* The Sixth Circuit has said that the defendant does not have to make any arguments regarding the Sentencing Commission policy statements. *Id.*

¹⁰ *United States v. Elias*, 984 F.3d 516, 519–20 (6th Cir. 2021).

¹¹ *United States v. Hunter*, 12 F.4th 555, 570 (6th Cir. 2021).

¹² *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021) (citations omitted); *United States v. Traylor*, 16 F.4th 485, 487 (6th Cir. 2021).

Case No. 4:17-cr-00459
GWIN, J.

the failure to be vaccinated despite access to the vaccine,” can an unvaccinated person present a successful compassionate release COVID-19 claim.¹³

Other arguments, however, could warrant relief, especially when taken together. For example, a defendant’s age and declining health conditions—independent of COVID-19 risk—may be considered extraordinary and compelling reasons.¹⁴ Courts have also found extraordinary and compelling reasons where the defendant was “the sole available family member to care reliably for his two minor children.”¹⁵

Lastly, the rehabilitation of a defendant is not, by itself, an extraordinary and compelling reason for compassionate release.¹⁶ But, evidence demonstrating “rehabilitation may be considered along with other circumstances in deciding whether extraordinary and compelling reasons for early release exist.”¹⁷

IV. Discussion

Because the Court decides this motion based on Defendant Drummond’s lack of extraordinary and compelling reasons, it does not need to consider the application of the § 3553(a) factors.¹⁸

¹³ *Id.*; see also *United States v. Estevez-Ulloa*, No. 21-2432, 2022 WL 1165771, at *2 (3d Cir. Apr. 20, 2022) (“Inmates who refuse the vaccine without just cause forgo a powerful protection against illness; they cannot claim that they are at serious risk while declining a potent tool to reduce that very risk.”).

¹⁴ See, e.g., *United States v. Stacks*, No. 1-cr-135, 2022 WL 1214883, at *3 (W.D.N.C. Apr. 25, 2022) (granting relief where “Defendant (1) [was] more than 65 years old, (2) [was] experiencing a serious decline in his health because of aging, and (3) [. . .] served well more than 10 years in prison.”).

¹⁵ *United States v. Francisco-Ovalle*, No. 18-cr-526, 2022 WL 1094730, at *2 (S.D.N.Y. Apr. 12, 2022) (citing *United States v. Lisi*, 440 F. Supp. 3d 246, 251 (S.D.N.Y. 2020)).

¹⁶ 28 U.S.C. § 994(t) (“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”).

¹⁷ *United States v. Hernandez-Carrillo*, No. 2:08-CR-55-2, 2022 WL 633568, at *2 (S.D. Ohio Mar. 4, 2022); see also *United States v. Glynn*, No. 06-cr-580, 2022 WL 562652, at *5 (S.D.N.Y. Feb. 24, 2022) (“The Court may now take account of [Defendant’s] upbringing and relative youth at the time of the offense conduct in conjunction with the evidence of his rehabilitation and changed character in the twenty years that [Defendant] has been in custody – something the Court could not consider at the time of sentencing – and this contributes to the Court’s assessment of the extraordinary and compelling circumstances warranting a reduction in [Defendant’s] sentence.”).

¹⁸ See *United States v. Ruffin*, 978 F.3d 1000, 1008 (6th Cir. 2020).

Case No. 4:17-cr-00459
GWIN, J.

Defendant's *pro se* motion cites the COVID-19 pandemic and his rehabilitation as grounds for relief.¹⁹ In particular, Defendant references his preexisting conditions of asthma and pre-diabetes, which put him at risk for serve illness from COVID-19.²⁰ He also cites the crowded and unsanitary conditions at FCI Hazelton when he filed the *pro se* motion in September 2020.²¹ And he presents his admirable achievements while incarcerated, including classes he completed and his placement in an "honor dormitory."²² And lastly, he refers to his supportive family.²³

These grounds do not allow the Court to grant compassionate release. The COVID-19 argument is foreclosed by Sixth Circuit precedent. Also, Defendant declined to be vaccinated and has not provided a compelling justification for the refusal.²⁴ Defendant does not contend that he is the only caretaker to provide for his family. And while laudable, Defendant's rehabilitative efforts, on their own, do not provide grounds for a sentence reduction.

V. Conclusion

The Court **DENIES** the compassionate release motion.

IT IS SO ORDERED.

Dated: May 27, 2022

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

¹⁹ Doc. 30-1. Defendant's counsel-assisted motion does not raise any specific compelling and extraordinary circumstances, despite its brief headings that purport to do so.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8.

²² *Id.* at 3.

²³ *Id.* at 4.

²⁴ Doc. 35 at 7 (citing Ex. 3).